HEWLETT-PACKARD COMPANY
Intellectual Property Administration
P.O. Box 272400
Fort Collins, Colorado 80527-2400

PATENT APPLICATION

ATTORNEY DOCKET NO. 200316372-1

IN THE
UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor(s): Daniel E. Ford, et al.

Confirmation No.: 9204

Application No.: 10/765,304

Examiner: Jeong S. Park

Filing Date: January 27, 2004

Group Art Unit: 2164

Title: DEVICE DRIVER SELECTION

Mail Stop Appeal Brief-Patents
Commissioner For Patents
PO Box 1450
Alexandria, VA 22313-1450

TRANSMITTAL OF APPEAL BRIEF

Transmitted herewith is the Appeal Brief in this application with respect to the Notice of Appeal filed on July 1, 2008.

☒ The fee for filing this Appeal Brief is $510.00 (37 CFR 41.20).

☐ No Additional Fee Required.

(complete (a) or (b) as applicable)

The proceedings herein are for a patent application and the provisions of 37 CFR 1.136(a) apply.

☐ (a) Applicant petitions for an extension of time under 37 CFR 1.136 (fees: 37 CFR 1.17(a)-(d)) for the total number of months checked below:

☐ 1st Month $120	☐ 2nd Month $460	☐ 3rd Month $1050	☐ 4th Month $1640

☐ The extension fee has already been filed in this application.

☒ (b) Applicant believes that no extension of time is required. However, this conditional petition is being made to provide for the possibility that applicant has inadvertently overlooked the need for a petition and fee for extension of time.

Please charge to Deposit Account 08-2025 the sum of $ 510. At any time during the pendency of this application, please charge any fees required or credit any over payment to Deposit Account 08-2025 pursuant to 37 CFR 1.25. Additionally please charge any fees to Deposit Account 08-2025 under 37 CFR 1.16 through 1.21 inclusive, and any other sections in Title 37 of the Code of Federal Regulations that may regulate fees.

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Typed Name: Jennifer L. Vomhof
Signature:

Respectfully submitted,
Daniel E. Ford, et al.
By

Edward J. Brooks III
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Telephone: (612) 236-0120

Rev 10/07(ApiBrief)

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PATENT APPLICATION

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Inventor(s): Daniel E. Ford, et al.

Confirmation No.: 9204

Application No.: 10/765,304

Examiner: Jeong S. Park

Filing Date: January 27, 2004

Group Art Unit: 2154

Title: DEVICE DRIVER SELECTION

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Date : 07/18/2008
Telephone : (612) 236-0120

Rev 10/07(ApiBrief)

Docket No.: 200316372-1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No.	:	10/765,304
Appellants:	:	Daniel E. Ford, et al.
Filed:	:	January 27, 2004
TC/A.U.	:	2154
Examiner:	:	Jeong S. Park
Title	:	DEVICE DRIVER SELECTION

APPEAL BRIEF

MS APPEAL BRIEF-PATENTS
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir or Madame:

This brief, in compliance with 37 C.F.R. § 41.37, is in furtherance of the Notice of Appeal filed under 37 C.F.R. § 41.31 on July 1, 2008.

This brief is accompanied by the fee set forth in 37 CFR § 41.20(b)(2), as described in the accompanying TRANSMITTAL OF APPEAL BRIEF.

This brief contains items under the following headings as required by 37 C.F.R. § 41.37:

I. Real Party In Interest

II. Related Appeals and Interferences

III. Status of Claims

IV. Status of Amendments

V. Summary of Claimed Subject Matter

VI. Grounds of Rejection to be Reviewed on Appeal

VII. Argument

VIII. Claims Appendix

IX. Evidence Appendix

X. Related Proceedings Appendix

The final page of this brief bears the attorney's signature.

I. REAL PARTY IN INTEREST

The real parties in interest for this appeal are:

A. The Hewlett-Packard Development Company, LP, a limited partnership established under the laws of the State of Texas and having a principal place of business at 20555 S.H. 249 Houston, TX 77070, U.S.A. (hereinafter "HPDC"); and

B. HPDC is a Texas limited partnership and is a wholly-owned affiliate of Hewlett-Packard Company, a Delaware Corporation, headquartered in Palo Alto, CA. The general or managing partner of HPDC is HPQ Holdings, LLC.

II. RELATED APPEALS AND INTERFERANCES

Appellant submits that no related application is presently undergoing appeal or interference proceedings.

II. STATUS OF CLAIMS

A. Total Claims: 1-37

B. Current Status of Claims:

1. Claims canceled: none
2. Claims withdrawn: none
3. Claims pending: 1-37
4. Claims allowed: none
5. Claims rejected: 1-37
6. Claims objected to: none

C. Claims on Appeal: 1-37

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IV. STATUS OF AMENDMENTS

Appellant has not filed any amendments to the application subsequent to the Final Office Action.

V. SUMMARY OF CLAIMED SUBJECT MATTER

A. Independent claim 1

Independent claim 1 recites a management station (Abstract; paragraphs 0007-0012 inclusive; paragraphs 0037-0038 inclusive; paragraph 0040, lines 9-14; paragraph 0042, lines 4-6; paragraph 0043, lines 4-5; paragraphs 0045-0062 inclusive; paragraph 0065, lines 6-10; Figure 1 at 112; and Figure 2 at 202, 204) that includes a processor (Abstract; and paragraph 0042, line 2), memory in communication with the processor (Abstract; and paragraph 0042, lines 2-6), and program instructions stored in the memory and executable on the processor (Abstract; paragraph 0031, lines 1-3; paragraph 0043, lines 5-10; paragraph 0062, lines 3-12; and Figure 2 at 202).

The program instructions are executable to initiate execution of a particular device function that will use a driver (Abstract; paragraph 0031, lines 1-3; paragraph 0034, lines 3-11; paragraph 0044, lines 1-3; paragraph 0045, lines 3-6; paragraph 0050, lines 2-4; paragraph 0055, lines 1-4; paragraph 0064, lines 3-11; Figure 2 at 204; and Figure 3 at 310), select a set of drivers based upon defined device information (Abstract; paragraphs 0048-0049 inclusive; paragraph 0051, lines 1-10; paragraphs 0058-0060 inclusive; paragraph 0065, lines 1-10; paragraph

0067, lines 1-12; paragraphs 0069-0071 inclusive; paragraphs 0073-0074 inclusive; Figure 2 at 204; Figure 3 at 320; and Figure 4 at 410), and call a routine in a particular driver from the selected set of drivers which executes to determine whether the particular driver is most appropriate to perform the particular device function for a particular device (Abstract; paragraph 0030, lines 4-8; paragraph 0050, lines 4-5; paragraphs 0052-0058 inclusive; paragraph 0059, lines 6-13; paragraph 0066, lines 1-14; paragraph 0072, line 3-6; Figure 2 at 205-1 through 205-M; Figure 3 at 330; and Figure 4 at 430).

Independent claim 1 is argued together with dependent claims 2-8.

1. Claim 2 is dependent from independent claim 1 and recites that the management station further includes program instructions which execute to select the particular driver to perform the particular device function based upon a response from the routine (paragraph 0066, lines 5-14).

2. Claim 3 is dependent from independent claim 1 and recites the management station, wherein the program instructions, to initiate the execution of the particular device function and select the set of drivers, are provided within management software (paragraph 0042, lines 3-6; paragraph 0050, lines 2-3; paragraph 0051, lines 1-10; paragraph 0059, lines 6-9; paragraph 0065, lines 6-10; and Figure 2 at 202) and wherein the program instructions to determine whether the particular driver is appropriate are provided within a particular driver (paragraph 0050, lines 4-5; paragraph 0066, lines 1-5; paragraph 0072, lines 3-6; Figure 2 at 205-1 through 205-M and 206-1 through 206-M; Figure 3 at 330; and Figure 4 at 430).

3. Claim 4 is dependent from independent claim 1 and recites that the management station includes program instructions to determine whether the particular driver is appropriate that execute to compare a device identifier with a driver identifier (Abstract; paragraphs 0048-0049 inclusive; paragraph 0051, lines 1-10; paragraphs 0058-0060 inclusive; paragraph 0065, lines 1-10; paragraph 0067, lines 1-12; paragraphs 0069-0071 inclusive; paragraphs 0073-0074 inclusive; Figure 2 at 204; Figure 3 at 320; and Figure 4 at 410).

4. Claim 5 is dependent from dependent claim 4 and recites that the device identifier is a system descriptor string (paragraph 0033, lines 5-6).

5. Claim 6 is dependent from dependent claim 4 and recites that the device identifier is a feature enabled on the particular device (paragraph 0033, line 7).

6. Claim 7 is dependent from dependent claim 4 and recites that the device identifier is a management information base on the particular device (paragraph 0033, lines 6-7).

7. Claim 8 is dependent from dependent claim 4 and recites that the device identifier is an identifiable bug in a set of executable instructions of the particular device (paragraph 0033, lines 8-9; and paragraph 0066, lines 12-13).

B. Independent claim 9

Independent claim 9 recites a management station (Abstract; paragraphs 0007-0012 inclusive; paragraphs 0037-0038 inclusive; paragraph 0040, lines 9-14; paragraph 0042, lines 4-6; paragraph 0043, lines 4-5; paragraphs 0045-0062 inclusive; paragraph 0065, lines 6-10; Figure 1 at 112; and Figure 2 at 202, 204) that

includes a processor (Abstract; and paragraph 0042, line 2), memory in communication with the processor (Abstract; and paragraph 0042, lines 2-6), and a management application having program instructions stored in the memory and executable on the processor (Abstract; paragraph 0031, lines 1-3; paragraph 0043, lines 5-10; paragraph 0062, lines 3-12; and Figure 2 at 202) to select a set of drivers based upon defined device information (Abstract; paragraphs 0048-0049 inclusive; paragraph 0051, lines 1-10; paragraphs 0058-0060 inclusive; paragraph 0065, lines 1-10; paragraph 0067, lines 1-12; paragraphs 0069-0071 inclusive; paragraphs 0073-0074 inclusive; Figure 2 at 204; Figure 3 at 320; and Figure 4 at 410), and select a particular driver from the selected set of drivers (Abstract; paragraph 0030, lines 4-8; paragraph 0050, lines 4-5; paragraphs 0052-0058 inclusive; paragraph 0059, lines 6-13; paragraph 0066, lines 1-14; paragraph 0072, line 3-6; Figure 2 at 205-1 through 205-M; Figure 3 at 330; and Figure 4 at 430).

The particular driver has program instructions stored in memory and executable on the processor to perform analysis to determine whether the particular driver is appropriate to perform a particular device function (Abstract; paragraph 0030, lines 4-8; paragraphs 0048-0049 inclusive; paragraph 0050, lines 4-5; paragraphs 0052-0058 inclusive; paragraph 0059, lines 6-13; paragraph 0066, lines 1-14; paragraph 0072, line 3-6; Figure 2 at 205-1 through 205-M; Figure 3 at 330; and Figure 4 at 430).

Independent claim 9 is argued together with dependent claims 10-15.

1. Claim 10 is dependent from independent claim 9 and recites

that the management station further includes program instructions within the particular driver which execute to initiate a determination of whether the particular driver is appropriate to perform the particular device function (Abstract; paragraph 0030, lines 4-8; paragraphs 0048-0049 inclusive; paragraph 0050, lines 4-5; paragraphs 0052-0058 inclusive; paragraph 0059, lines 6-13; paragraph 0066, lines 1-14; paragraph 0072, line 3-6; Figure 2 at 205-1 through 205-M; Figure 3 at 330; and Figure 4 at 430).

2. Claim 11 is dependent from independent claim 9 and recites that the particular driver includes a set of extensible criteria used to determine whether the particular driver is appropriate (paragraphs 0031-0034 inclusive; and paragraph 0073, lines 1-4).

3. Claim 12 is dependent from independent claim 9 and recites that the management station further includes program instructions within the particular driver which execute to query a particular device for a firmware version identifier (paragraph 0051, lines 7-10; paragraph 0066, line 13; and paragraph 0069, line 5).

4. Claim 13 is dependent from independent claim 9 and recites that the selection of a particular driver from the selected set of drivers is based upon a release date of the particular driver (paragraph 0060, lines 1-11; paragraph 0069, lines 4-5; and paragraph 0070, lines 1-3).

5. Claim 14 is dependent from independent claim 9 and recites

that the selection of a particular driver from the selected set of drivers is based upon a device feature supported by the particular driver (paragraph 0067, lines 1-12; and paragraph 0073, lines 4-6).

6. Claim 15 is dependent from independent claim 9 and recites that the supported device feature is a security protocol (paragraph 0058, lines 3-12).

C. Independent claim 16

Independent claim 16 recites a method of selecting a driver for a device (Title; Abstract; paragraph 0030, lines 1-4; paragraph 0062, lines 1-2; paragraph 0064, lines 1-2; paragraph 0071, lines 1-2).

The method includes initiating execution of a particular device function that will use a driver (Abstract; paragraph 0031, lines 1-3; paragraph 0034, lines 3-11; paragraph 0044, lines 1-3; paragraph 0045, lines 3-6; paragraph 0050, lines 2-4; paragraph 0055, lines 1-4; paragraph 0064, lines 3-11; Figure 2 at 204; and Figure 3 at 310), selecting a set of drivers based upon defined device information (Abstract; paragraphs 0048-0049 inclusive; paragraph 0051, lines 1-10; paragraphs 0058-0060 inclusive; paragraph 0065, lines 1-10; paragraph 0067, lines 1-12; paragraphs 0069-0071 inclusive; paragraphs 0073-0074 inclusive; Figure 2 at 204; Figure 3 at 320; and Figure 4 at 410), and calling a routine in a particular driver from the selected set of drivers which executes to determine whether the particular driver is most appropriate to perform the particular device function for a particular device (Abstract; paragraph 0030, lines 4-8; paragraph 0050, lines 4-5; paragraphs 0052-0058 inclusive; paragraph 0059, lines 6-13; paragraph 0066, lines 1-14; paragraph

0072, line 3-6; Figure 2 at 205-1 through 205-M; Figure 3 at 330; and Figure 4 at 430).

Independent claim 16 is argued together with dependent claims 17-23.

1. Claim 17 is dependent from independent claim 16 and recites that the routine executes if a driver cannot be determined based on the defined device information (paragraph 0021, lines 4-11; and paragraph 0059, lines 1-13).

2. Claim 18 is dependent from independent claim 16 and recites that initiating the execution of the particular device function and selecting the set of drivers are provided by program instructions within network management software (paragraph 0042, lines 3-6; paragraph 0050, lines 2-3; paragraph 0051, lines 1-10; paragraph 0059, lines 6-9; paragraph 0065, lines 6-10; and Figure 2 at 202) and wherein determining whether the particular driver is appropriate is provided by program instructions within the particular driver (paragraph 0050, lines 4-5; paragraph 0066, lines 1-5; paragraph 0072, lines 3-6; Figure 2 at 205-1 through 205-M and 206-1 through 206-M; Figure 3 at 330; and Figure 4 at 430).

3. Claim 19 is dependent from independent claim 16 and recites that initiating the execution of the particular device function and selecting the set of drivers are provided by program instructions within storage device management software (paragraph 0028, line 7; and paragraph 0065, lines 6-10) and wherein determining whether the particular driver is appropriate is provided by program instructions within a particular driver (paragraph 0050, lines 4-5; paragraph 0066, lines 1-5; paragraph 0072, lines 3-6; Figure 2 at 205-1 through 205-M and 206-1 through 206-M; Figure 3 at 330; and Figure 4 at 430).

4. Claim 20 is dependent from independent claim 16 and recites that the method further includes searching each driver within the set of drivers to identify a particular driver that supports a particular set of device features (paragraph 0045, lines 6-10; paragraphs 0056-0058 inclusive; and paragraph 0067, lines 1-12).

5. Claim 21 is dependent from independent claim 16 and recites that the method further includes organizing the set of drivers by a release date of each driver (paragraph 0069, lines 1-5).

6. Claim 22 is dependent from dependent claim 21 and recites that the method further includes searching the set of drivers from newest release date to oldest release date (paragraph 0049, lines 5-8; paragraph 0070, lines 1-6; and paragraph 0074, lines 5-11).

7. Claim 23 is dependent from independent claim 16 and recites that the method further includes comparing the set of device features against sets of device features supported by a number of available drivers within the set of drivers (paragraph 0059, lines 3-8; paragraph 0067, lines 4-12; paragraph 0070, lines 3-6; paragraph 0073, lines 4-6; and paragraph 0074, lines 1-3).

D. Independent claim 24

Independent claim 24 recites a method of selecting a driver for a device (Title; Abstract; paragraph 0030, lines 1-4; paragraph 0062, lines 1-2; paragraph 0064, lines 1-2; paragraph 0071, lines 1-2).

The method includes selecting a set of drivers based upon defined device information (Abstract; paragraphs 0048-0049 inclusive; paragraph 0051, lines 1-10;

paragraphs 0058-0060 inclusive; paragraph 0065, lines 1-10; paragraph 0067, lines 1-12; paragraphs 0069-0071 inclusive; paragraphs 0073-0074 inclusive; Figure 2 at 204; Figure 3 at 320; and Figure 4 at 410), selecting a particular driver from the selected set of drivers (Abstract; paragraph 0030, lines 4-8; paragraph 0050, lines 4-5; paragraphs 0052-0058 inclusive; paragraph 0059, lines 6-13; paragraph 0066, lines 1-14; paragraph 0072, line 3-6; Figure 2 at 205-1 through 205-M; Figure 3 at 330; and Figure 4 at 430), and performing analysis within the particular driver to determine whether the particular driver is appropriate to perform a particular device function (Abstract; paragraph 0030, lines 4-8; paragraphs 0048-0049 inclusive; paragraph 0050, lines 4-5; paragraphs 0052-0058 inclusive; paragraph 0059, lines 6-13; paragraph 0066, lines 1-14; paragraph 0072, line 3-6; Figure 2 at 205-1 through 205-M; Figure 3 at 330; and Figure 4 at 430).

Independent claim 24 is argued together with dependent claims 25-28.

1. Claim 25 is dependent from independent claim 24 and recites that the method further includes organizing the drivers within the set of drivers based on a hierarchy (paragraph 0069, lines 1-3).

2. Claim 26 is dependent from dependent claim 25 and recites that the method further includes organizing the hierarchy based on a driver version identifier (paragraph 0069, line 6).

3. Claim 27 is dependent from dependent claim 25 and recites that the method further includes organizing the hierarchy based on a driver release date (paragraph 0069, lines 4-5).

4. Claim 28 is dependent from dependent claim 25 and recites

that the method further includes selecting an appropriate driver from among the hierarchy based on comparison of whether a feature of the particular device is supported by the particular driver (paragraph 0070, lines 3-6).

E. Independent claim 29

Independent claim 29 recites a computer readable storage medium having program instructions that are executed by a computing device to cause a device to perform a method (paragraph 0043, lines 5-10; and paragraph 0059, lines 6-9).

The method includes initiating execution of a particular device function that will use a driver (Abstract; paragraph 0031, lines 1-3; paragraph 0034, lines 3-11; paragraph 0044, lines 1-3; paragraph 0045, lines 3-6; paragraph 0050, lines 2-4; paragraph 0055, lines 1-4; paragraph 0064, lines 3-11; Figure 2 at 204; and Figure 3 at 310), selecting a set of drivers based upon defined device information (Abstract; paragraphs 0048-0049 inclusive; paragraph 0051, lines 1-10; paragraphs 0058-0060 inclusive; paragraph 0065, lines 1-10; paragraph 0067, lines 1-12; paragraphs 0069-0071 inclusive; paragraphs 0073-0074 inclusive; Figure 2 at 204; Figure 3 at 320; and Figure 4 at 410), and calling a routine in a particular driver from the selected set of drivers which executes to determine whether the particular driver is most appropriate to perform the particular device function for a particular device (Abstract; paragraph 0030, lines 4-8; paragraphs 0048-0049 inclusive; paragraph 0050, lines 4-5; paragraphs 0052-0058 inclusive; paragraph 0059, lines 6-13; paragraph 0066, lines 1-14; paragraph 0072, line 3-6; Figure 2 at 205-1 through 205-M; Figure 3 at 330; and Figure 4 at 430).

Independent claim 29 is argued together with dependent claims 30-32.

1. Claim 30 is dependent from independent claim 29 and recites that the computer readable medium further includes program instructions for determining which driver includes support for functions that most closely correlates to a set of device functions (paragraph 0047, lines 1-7; paragraph 0056, lines 3-6; and paragraph 0061, lines 5-9).

2. Claim 31 is dependent from independent claim 29 and recites that the computer readable medium further includes program instructions for extracting information from the particular device regarding what version of firmware the particular device is using (paragraph 0045, lines 2-5; paragraph 0051, lines 7-10; paragraph 0066, lines 10-14; and paragraph 0068, lines 1-3).

3. Claim 32 is dependent from dependent claim 31 and recites that the computer readable medium further includes program instructions for selecting the particular driver for use with the particular device based upon the device firmware version and firmware version compatibility of the particular driver (paragraph 0068, lines 3-8).

F. Independent claim 33

Independent claim 33 recites a management station (Abstract; paragraphs 0007-0012 inclusive; paragraphs 0037-0038 inclusive; paragraph 0040, lines 9-14; paragraph 0042, lines 4-6; paragraph 0043, lines 4-5; paragraphs 0045-0062 inclusive; paragraph 0065, lines 6-10; Figure 1 at 112; and Figure 2 at 202, 204) that includes a processor (Abstract; and paragraph 0042, line 2), memory in communication with the processor (Abstract; and paragraph 0042, lines 2-6), and means for automatically selecting, from among a number of drivers, a particular

driver having features which most closely correlates to a set of device features of a device (paragraphs 0058-0059 inclusive; paragraph 0067, lines 1-12; and paragraph 0073, lines 4-6), where a routine is called in the particular driver which executes to determine a correlation of the particular driver to the set of device features of a device (paragraph 0059, lines 3-8; paragraph 0067, lines 4-12; paragraph 0070, lines 3-6; paragraph 0073, lines 4-6; and paragraph 0074, lines 1-3).

Independent claim 33 is argued together with dependent claims 34-37.

1. Claim 34 is dependent from independent claim 33 and recites that at least a portion of the means for automatically selecting is delegated to program instructions within the particular driver (Abstract; paragraph 0030, lines 4-8; paragraphs 0048-0049 inclusive; paragraph 0050, lines 4-5; paragraphs 0052-0058 inclusive; paragraph 0059, lines 6-13; paragraph 0066, lines 1-14; paragraph 0072, line 3-6; Figure 2 at 205-1 through 205-M; Figure 3 at 330; and Figure 4 at 430).

2. Claim 35 is dependent from independent claim 33 and recites that the means for automatically selecting a driver includes program instructions within each driver which execute to narrow a list of available drivers (paragraph 0031, lines 3-6; paragraph 0032, lines 3-5; paragraph 0034, lines 1-11; paragraph 0045, lines 6-10; paragraph 0046, lines 1-3; paragraphs 0048-0049 inclusive; paragraph 0051, lines 7-10; paragraph 0052, lines 1-10; paragraph 0054, lines 1-9; and paragraph 0060, lines 1-10).

3. Claim 36 is dependent from independent claim 33 and recites

that the means for automatically selecting a driver includes program instructions within a particular driver which execute to determine whether the particular driver is appropriate for use with the device (paragraph 0050, lines 4-5; paragraph 0066, lines 1-5; paragraph 0072, lines 3-6; Figure 2 at 205-1 through 205-M and 206-1 through 206-M; Figure 3 at 330; and Figure 4 at 430).

4. Claim 37 is dependent from dependent claim 36 and recites that the program instructions within a particular driver include program instructions which execute to analyze the set of device features against a set of driver features to determine whether the particular driver is appropriate for use with the particular device (paragraph 0059, lines 3-8; paragraph 0067, lines 4-12; paragraph 0070, lines 3-6; paragraph 0073, lines 4-6; and paragraph 0074, lines 1-3).

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

A. Whether or not dependent claims 30-32 are unpatentable under 35 U.S.C. § 101 because the invention is allegedly directed to non-statutory subject matter.

B. Whether or not claims 1-7, 9-11, 13, 14, 16-24, 28-30, and 33-37 are unpatentable under 35 USC § 102(e) as allegedly being anticipated by Moore (U.S. Pub. No. 2004/0003135) (Technique for Driver Installation).

C. Whether or not dependent claims 15, 25, and 27 are unpatentable under 35 USC § 103(a) over Moore (U.S. Pub. No. 2004/0003135).

D. Whether or not claims 12, 26, 31, and 32 are unpatentable under 35 USC § 103(a) over Moore (U.S. Pub. No. 2004/0003135) as applied to claims 9, 24

and 29 above, and further in view of Philyaw (U.S. Patent No. 6,704,864) (Automatic Configuration of Equipment Software).

VII. ARGUMENT

A. Arguments against the rejection under 35 U.S.C. § 101 because the invention is allegedly directed to non-statutory subject matter.

1. Arguments regarding dependent claims 30-32.

a. **For dependent claims 30-32, the subject matter thereof is not directed to non-statutory subject matter.**

Appellant notes that the bodies of dependent claims 30-32 have not been rejected under 35 U.S.C. § 101. That is, the Examiner appears to have rejected dependent claims 30-32 based upon the preamble recitations.

Appellant further notes that claims 30-32 depend directly or indirectly from independent claim 29. The preamble of independent claim 29, as previously presented, is not currently rejected under 35 U.S.C. § 101. Appellant's independent claim 29 includes the statutory subject matter of "a computer readable storage medium having program instructions that are executed by a computing device to cause a device to perform a method." Support for the recited language of independent claim 29 can be found at page 9, lines 10-15, of Appellant's specification where the specification states, "many of these devices include processor(s) and memory hardware. Computer executable instructions, (e.g., software and/or firmware) reside in memory, such as on a management station or other device, to manage a device feature, and/or manage a network".

Appellant respectfully submits that dependent claims 30-32 inherit all the elements and limitations of the independent claim from which they depend. Hence, Appellant respectfully submits that the preambles of dependent claims 30-32 are similar enough to the preamble of independent claim 29 to provide a reader with a clear understanding that they refer to independent claim 29.

Nonetheless, Appellant is willing to amend the preambles to dependent claims 30-32, if determined to be necessary by review of the present appeal brief, to include sufficient preamble language of independent claim 29 to overcome the 35 U.S.C. § 101 rejection.

B. Arguments against the rejections under § 102(e) over the Moore '135 reference.

1. Arguments regarding claims 1-7, 9-11, 13, 14, 16-24, 28-30, and 33-37.

a. **For claims 1-7, 9-11, 13, 14, 16-24, 28-30, and 33-37, the cited reference does not teach each and every element.**

Appellant does not admit that the Moore '135 reference is indeed prior art and reserves the right to swear behind at a future date. Nonetheless, Appellant respectfully submits that the elements and limitations of the claims of the present application, as recited herein, are patentably distinguishable from the teachings of the cited reference for at least the following reasons.

Appellant's independent claims 1, 16, and 29 each recite calling "a routine in a particular driver from the selected set of drivers which executes to determine

whether the particular driver is most appropriate to perform the particular device function for a particular device."

Independent claim 9 recites, "the particular driver having program instructions stored in memory and executable on the processor to: perform analysis to determine whether the particular driver is appropriate to perform a particular device function." Additionally, independent claim 24 recites, "selecting a particular driver from the selected set of drivers; and performing analysis within the particular driver to determine whether the particular driver is appropriate to perform a particular device function."

Independent claim 33 recites, "means for automatically selecting, from among a number of drivers, a particular driver having features which most closely correlates to a set of device features of a device, where a routine is called in the particular driver which executes to determine a correlation of the particular driver to the set of device features of a device."

In contrast, the Moore reference appears to describe gathering "operating system information about the operating system and device information about the device and generates one or more device identifiers by concatenating the operating system information with the device information." (Page 1, paragraph 0010, lines 3-7). The Moore reference goes on to state, "The generated identifiers are then used to select and install the appropriate device driver for the device." (Page 1, paragraph 0010, lines 7-9).

The Moore reference appears to teach, on page 2, paragraph 0026, lines 5-11:

> NEWDEV [New Device Dynamic-Linked Library] 210 is a software library that comprises software routines that are used to initiate the installation of a driver associated with a new device. SETUP [Setup Application Programming Interface] 220 is an application-programming interface (API) that comprises software routines that perform various device driver installation tasks such as searching the [driver information] INF files and building a potential list of device drivers associated with the new device.

The Moore reference appears to go on to teach, on page 3, paragraph 0034, lines 1-13:

> At Step 445, NEWDEV 210 calls SETUP 220 to build a list of possible drivers that can be used with device 165. SETUP 220 prompts the user to specify the location of the INF files associated with device 165's driver, as indicated at Step 450. The location specified could be, for example, a directory on a CD-ROM contained in removable disk 110 or a disk drive on the data network that is accessible through NIC 117. At Step 455, SETUP 220 searches the user-specified location to find INF files that contain information that matches the device IDs. If an INF file is found to match, device driver information contained in the matching INF file that specifies a particular driver is added to the list of possible drivers.

In addition, the Moore reference appears to further teach, "SETUP 220 assigns a rank to each possible driver in the list and selects the best driver for device 165." (Page 3, paragraph 0035, lines 1-3).

The Moore reference appears to use a NEWDEV Dynamic-Linked Library (DLL) 210 to call up software routines from the SETUP Application Programming

Interface 220 within the computer system to select the best driver for a device using INF files associated with the device. The Moore reference also appears to require that the SETUP 220 prompts the user to specify the location of the INF files associated with device 165's driver.

Appellant respectfully submits that neither the NEWDEV Dynamic-Linked Library nor the SETUP Application Programming Interface is a driver dedicated to or capable of controlling a device as described in the present application. That is, Appellant respectfully submits that the Moore reference does not teach calling a routine in a particular device driver from the selected set of drivers that automatically executes to determine whether the particular device driver is most appropriate to perform the particular device function for a particular device.

In the Response to Arguments section of the June 10, 2008, Final Office Action, the Examiner stated that, based upon a clause of one sentence appearing in the www.freebyte.com/drivers/#introduction website without further explanation, "A driver is a program or dll that controls a device" (emphasis added by the Examiner in the FOA). Appellant respectfully submits that whether or not a DLL can in some situations potentially function as a driver, in the Moore reference the NEWDEV Dynamic-Linked Library (DLL) does not function as, nor have the potential to function as, a driver that controls a device. That is, "NEWDEV 210 calls SETUP 220 to build a list of possible drivers that can be used with device 165." (Moore page 3, paragraph 0034, lines 1-3).

Moreover, Appellant respectfully submits that the SETUP Application Programming Interface, as described in the Moore reference, does not function as,

nor have the potential to function as, a driver that controls a device. That is, "SETUP 220 searches the user-specified location to find INF files that contain information that matches the device IDs." (Page 3, paragraph 0034, lines 8-10).

Hence, Appellant respectfully submits that the Moore reference does not teach, as recited in independent claims 1, 16, and 29:

> call[ing] a routine in a particular driver from the selected set of drivers which executes to determine whether the particular driver is most appropriate to perform the particular device function for a particular device.

Nor does the Moore reference teach, as recited in independent claim 9:

> the particular driver having program instructions stored in memory and executable on the processor to: perform analysis to determine whether the particular driver is appropriate to perform a particular device function.

Nor does the Moore reference teach, as recited in independent claim 24:

> performing analysis within the particular driver to determine whether the particular driver is appropriate to perform a particular device function.

In addition, the Moore reference does not teach, as recited in independent claim 33:

> means for automatically selecting, from among a number of drivers, a particular driver having features which most closely correlates to a set of device features of a device, where a routine is called in the particular driver which executes to determine a correlation of the particular driver to the set of device features of a device.

As such, Appellant respectfully submits that the Moore reference does not teach each and every element and limitation of independent claims 1, 9, 16, 24, 29, and 33. Accordingly, Appellant respectfully requests reconsideration and withdrawal of the § 102(e) rejection of independent claims 1, 9, 16, 24, 29, and 33, as well as those claims that depend therefrom.

C. Arguments against the rejections under § 103(a) over the Moore '135 reference.

1. Arguments regarding dependent claims 15, 25, and 27.

a. **For dependent claims 15, 25, and 27, the cited reference does not teach, suggest, or render obvious each and every element.**

As presented above, Appellant does not admit that the Moore '135 reference is indeed prior art and reserves the right to swear behind at a future date. Nonetheless, Appellant respectfully submits that the elements and limitations of the claims of the present application, as recited herein, are patentably distinguishable from the teachings of the cited reference for at least the following reasons.

Claim 15 depends from independent claim 9 and claims 25 and 27 depend from independent claim 24 of the present application. For the reasons presented above, Appellant respectfully submits that the Moore reference does not teach, suggest, or render obvious each and every element of independent claims 9 and 24.

For example, the Moore reference does not appear to teach, suggest, or render obvious, "the particular driver having program instructions stored in memory and executable on the processor to: perform analysis to determine whether the particular driver is appropriate to perform a particular device function", as recited in

independent claim 9. Nor does the Moore reference teach, suggest, or render obvious, "performing analysis within the particular driver to determine whether the particular driver is appropriate to perform a particular device function," as recited in independent claim 24.

As such, the deficiencies of the Moore reference with regard to independent claims 9 and 24 are not cured by rejection of dependent claims 15, 25, and 27. Accordingly, Appellant respectfully requests reconsideration and withdrawal of the § 103(a) rejection of dependent claims 15, 25, and 27.

D. Arguments against the rejections under § 103(a) over the Moore '135 reference in view of the Philyaw reference '864.

1. Arguments regarding dependent claims 12, 26, 31, and 32.

a. **For dependent claims 12, 26, 31, and 32, the cited reference does not teach, suggest, or render obvious each and every element.**

As presented above, Appellant does not admit that the Moore '135 reference is indeed prior art and reserves the right to swear behind at a future date. Nonetheless, Appellant respectfully submits that the elements and limitations of the claims of the present application, as recited herein, are patentably distinguishable from the teachings of the cited reference for at least the following reasons.

Claim 12 depends from independent claim 9, claim 26 depends from independent claim 24, and claims 31 and 32 depend from independent claim 29 of the present application. For the reasons presented above, Appellant respectfully submits that the Moore reference does not teach, suggest, or render obvious each and every element of independent claims 9, 24, and 29. In addition, Appellant

respectfully submits that the Philyaw '864 reference does not cure the deficiencies of the Moore reference with regard to independent claims 9, 24, and 29.

That is, the Philyaw reference does not teach, suggest, or render obvious, "the particular driver having program instructions stored in memory and executable on the processor to: perform analysis to determine whether the particular driver is appropriate to perform a particular device function", as recited in independent claim 9. Nor does the Philyaw reference teach, suggest, or render obvious, "performing analysis within the particular driver to determine whether the particular driver is appropriate to perform a particular device function," as recited in independent claim 24. In addition, the Philyaw reference does not teach, suggest, or render obvious, "calling a routine in a particular driver from the selected set of drivers which executes to determine whether the particular driver is most appropriate to perform the particular device function for a particular device", as recited in independent claim 29.

As such, Appellant respectfully submits that the presently claimed invention is not taught by, nor made obvious in view of, the combination of the Moore and Philyaw references. Accordingly, Appellant respectfully requests reconsideration and withdrawal of the § 103(a) rejection of dependent claims 12, 26, 31, and 32.

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CONCLUSION

Appellant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner and/or members of the Board are invited to telephone Appellant's attorney Edward J. Brooks III at (612) 236-0120 to facilitate this appeal.

At any time during the pendency of this application, please charge any additional fees or credit overpayment to the Deposit Account No. 08-2025.

CERTIFICATE UNDER 37 C.F.R. §1.8: The undersigned hereby certifies that this correspondence is being transmitted to the United States Patent and Trademark Office facsimile number (571) 273-8300, on this 18 day of July, 2008.

Jennifer L. Vonbank
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7/18/2008
Date:

VIII. CLAIMS APPENDIX

1. (Previously Presented) A management station, comprising:

a processor;

memory in communication with the processor; and

program instructions stored in the memory and executable on the processor to:

initiate execution of a particular device function that will use a driver;

select a set of drivers based upon defined device information; and

call a routine in a particular driver from the selected set of drivers which executes to determine whether the particular driver is most appropriate to perform the particular device function for a particular device.

2. (Original) The management station of claim 1, further including program instructions which execute to select the particular driver to perform the particular device function based upon a response from the routine.

3. (Previously Presented) The management station of claim 1, wherein the program instructions, to initiate the execution of the particular device function and select the set of drivers, are provided within management software and wherein the program instructions to determine whether the particular driver is appropriate are provided within a particular driver.

4. (Original) The management station of claim 1, wherein the program instructions to determine whether the particular driver is appropriate execute to compare a device identifier with a driver identifier..

5. (Original) The management station of claim 4, wherein the device identifier is a system descriptor string.

6. (Original) The management station of claim 4, wherein the device identifier is a feature enabled on the particular device.

7. (Original) The management station of claim 4, wherein the device identifier is a management information base on the particular device.

8. (Original) The management station of claim 4, wherein the device identifier is an identifiable bug in a set of executable instructions of the particular device.

9. (Previously Presented) A management station, comprising:

a processor;

memory in communication with the processor; and

a management application having program instructions stored in the memory and executable on the processor to:

select a set of drivers based upon defined device information;

select a particular driver from the selected set of drivers; and

the particular driver having program instructions stored in memory and executable on the processor to:

perform analysis to determine whether the particular driver is appropriate to perform a particular device function.

10. (Original) The management station of claim 9, further including program instructions within the particular driver which execute to initiate a determination of whether the particular driver is appropriate to perform the particular device function.

11. (Original) The management station of claim 9, wherein the particular driver includes a set of extensible criteria used to determine whether the particular driver is appropriate.

12. (Original) The management station of claim 9, further including program instructions within the particular driver which execute to query a particular device for a firmware version identifier.

13. (Original) The management station of claim 9, wherein the selection of a particular driver from the selected set of drivers is based upon a release date of the particular driver.

14. (Original) The management station of claim 9, wherein the selection of a particular driver from the selected set of drivers is based upon a device feature supported by the particular driver.

15. (Original) The management station of claim 9, wherein the supported device feature is a security protocol.

16. (Original) A method of selecting a driver for a device, comprising:

initiating execution of a particular device function that will use a driver;

selecting a set of drivers based upon defined device information; and

calling a routine in a particular driver from the selected set of drivers which executes to determine whether the particular driver is most appropriate to perform the particular device function for a particular device.

17. (Original) The method of claim 16, wherein the routine executes if a driver cannot be determined based on the defined device information.

18. (Previously Presented) The method of claim 16, wherein initiating the execution of the particular device function and selecting the set of drivers are provided by program instructions within network management software and wherein determining whether the particular driver is appropriate is provided by program instructions within the particular driver.

19. (Previously Presented) The method of claim 16, wherein initiating the execution of the particular device function and selecting the set of drivers are provided by program instructions within storage device management software and wherein determining whether the particular driver is appropriate is provided by program instructions within a particular driver.

20. (Original) The method of claim 16, further including searching each driver within the set of drivers to identify a particular driver that supports a particular set of device features.

21. (Original) The method of claim 16, further including organizing the set of drivers by a release date of each driver.

22. (Original) The method of claim 21, further including searching the set of drivers from newest release date to oldest release date.

23. (Original) The method of claim 16, further including comparing the set of device features against sets of device features supported by a number of available drivers within the set of drivers.

24. (Original) A method of selecting a driver for a device, comprising:

selecting a set of drivers based upon defined device information;

selecting a particular driver from the selected set of drivers; and

performing analysis within the particular driver to determine whether the particular driver is appropriate to perform a particular device function.

25. (Original) The method of claim 24, further including organizing the drivers within the set of drivers based on a hierarchy.

26. (Original) The method of claim 25, further including organizing the hierarchy based on a driver version identifier.

27. (Original) The method of claim 25, further including organizing the hierarchy based on a driver release date.

28. (Previously Presented) The method of claim 25, further including selecting an appropriate driver from among the hierarchy based on comparison of whether a feature of the particular device is supported by the particular driver.

29. (Previously Presented) A computer readable storage medium having program instructions that are executed by a computing device to cause a device to perform a method, comprising:

initiating execution of a particular device function that will use a driver;

selecting a set of drivers based upon defined device information; and

calling a routine in a particular driver from the selected set of drivers which executes to determine whether the particular driver is most appropriate to perform the particular device function for a particular device.

30. (Original) The computer readable medium of claim 29, further including determining which driver includes support for functions that most closely correlates to a set of device functions.

31. (Original) The computer readable medium of claim 29, further including extracting information from the particular device regarding what version of firmware the particular device is using.

32. (Original) The computer readable medium of claim 31, further including selecting the particular driver for use with the particular device based upon the device firmware version and firmware version compatibility of the particular driver.

33. (Previously Presented) A management station, comprising:

a processor;

memory in communication with the processor; and

means for automatically selecting, from among a number of drivers, a particular driver having features which most closely correlates to a set of device features of a device, where a routine is called in the particular driver which executes to determine a correlation of the particular driver to the set of device features of a device.

34. (Original) The management station of claim 33, wherein at least a portion of the means for automatically selecting is delegated to program instructions within the particular driver.

35. (Original) The management station of claim 33, wherein the means for automatically selecting a driver includes program instructions within each driver which execute to narrow a list of available drivers.

36. (Original) The management station of claim 33, wherein the means for automatically selecting a driver includes program instructions within a particular driver which execute to determine whether the particular driver is appropriate for use with the device.

37. (Previously Presented) The management station of claim 36, wherein the program instructions within a particular driver includes program instructions which execute to analyze the set of device features against a set of driver features to determine whether the particular driver is appropriate for use with the particular device.

IX. EVIDENCE APPENDIX

None

X. RELATED PROCEEDINGS APPENDIX

None